

FILE

U.S. DEPT. OF JUSTICE
ENV. & NAT. RES. DIV.
DISTRICT COURT, WATER DIVISION, STATE OF COLORADO

CASE NO. W-1633-76A

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FILED IN DISTRICT COURT, WATER DIVISION 7
1997
DURANGO, COLORADO

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA IN THE COUNTY OF MONTEZUMA (Reserved Water Rights for Hovenweep National Monument)

THIS MATTER comes before the Court for entry of Findings of Fact, Conclusions of Law and Decree on the application for reserved water rights at Hovenweep National Monument. The Court, having examined the records and files herein, having taken testimony where such testimony was necessary, and being now fully and sufficiently advised in the premises, hereby makes the following Findings of Fact, Conclusions of Law and Decree:

FINDINGS OF FACT

1. Pursuant to the McCarran Amendment, 43 U.S.C. §666, the United States of America filed an application for water rights at the Hovenweep National Monument, Mesa Verde National Park and Yucca House National Monument, on December 30, 1976, which was assigned Case No. W-1633-76. An amended application for reserved water rights at Hovenweep National Monument was filed on February 2, 1977 and was assigned Case No. W-1633-76A.

2. The following Objectors timely filed Statements of Opposition in Case No. W-1633-76:

City and County of Denver
State of Colorado, Department of Natural Resources
Dolores Water Conservancy District
Southwestern Water Conservation District
Florida Water Conservancy District
La Plata Water Conservancy District
Mancos Water Conservancy District
Summit Reservoir and Irrigation Co.
Colorado River Water Conservation District
Town of Rico
City of Cortez
Town of Dolores
Town of Dove Creek
Montezuma Valley Irrigation Co.
Dolores Flood Control District

All of the Objectors, with the exception of the Dolores Flood Control District, have stipulated to the entry of this Findings of Fact, Conclusions of Law and Decree ("Decree") or withdrawn their Statement of Opposition. As stated in the Affidavit filed

concurrently with this Decree, the United States was unable to locate present counsel for the Dolores Flood Control District or confirm that it is still in existence.

3. The name, address and telephone number of the applicant:

United States of America
% U.S. Department of Justice
999 18th Street, Suite 945
Denver, CO 80202
(303) 312-7300

4. In its application, the United States:

a. claims reserved rights in the Hovenweep National Monument to "all water in, on, under, adjacent to, or otherwise appurtenant to the land . . . , tributary or non-tributary," described by Proclamation No. 1654 of March 2, 1923 (42 Stat. 2299); amended by Proclamation No. 2924 of April 26, 1951 (65 Stat. c8); Proclamation No. 2998 of November 20, 1952 (67 Stat. c21); and Proclamation No. 3132 of April 6, 1956 (70 Stat. c26) with priority dates as of the dates these lands were withdrawn from the public domain.

b. claims reserved water rights for the following uses:

for the preservation from injury or spoliation of the ruins and other works and relics of prehistoric and primitive man within said monument; recreation, domestic uses; municipal and administrative site uses; irrigation; stock grazing and watering; the development, conservation and management of resident and migratory wildlife and wildlife resources, the terms wildlife and wildlife resources to include birds and mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent; fire fighting and protection, forest growth, management, improvement and protection; commercial drinking and sanitary uses; road watering, watershed protection and management; wilderness preservation, flood, soil erosion control; preservation of educational, historic, scientific, scenic, aesthetic and other public values and habitat protection and management.

c. claims reserved water rights from the following sources and in the following amounts: that quantity "of surface, ground and underground waters, tributary and non-tributary, which are situated in this Water Division and are located in, on, under adjacent or otherwise appurtenant to" the reservation, and which are, or will become necessary to fulfill the present and future purposes for which the reservation was created.

5. The Hovenweep National Monument was established pursuant to the Antiquities Act, 16 U.S.C. § 431, by Proclamation No. 1654 of March 2, 1923 (42 Stat. 2299), for the purpose of protecting and preserving "four groups of ruins, including prehistoric structures, the majority of which belong to unique types not found in other National Monuments, and show the finest prehistoric masonry in the United States". Proclamation No. 2924 of April 26, 1951 (65 Stat. c8) reserved additional lands, described therein, containing additional ruins. Proclamation No. 2998 of November 20, 1952 (67 Stat. c21) reserved additional lands, described therein, containing "very important archeological sites, including small pueblos and an exceptional and significant great kiva . . . which kiva has never been excavated by archaeologists or vandalized by unauthorized digging." Proclamation No. 3132 of April 6, 1956 (70 Stat. c26) added certain lands, described therein, containing certain other ruins. The respective reservations are shown in Exhibit A, the map attached hereto and made a part hereof.

6. There are numerous springs located on the lands reserved from the public domain in Hovenweep National Monument. These springs served as sources of water and food for the prehistoric inhabitants of the land now comprising Hovenweep National Monument. The springs are integral components of the prehistoric masonry structures. The prehistoric structures include the remains of water management systems including spring developments, cisterns and irrigation ditches. The continued flow of these springs is necessary for the protection and interpretation of the ruins, including prehistoric masonry structures, sought to be preserved by the respective proclamations.

7. Exhibit B (IN SITU USES FOR SPRINGS AT HOVENWEEP NATIONAL MONUMENT), which is attached hereto and made a part hereof, lists the springs located on the lands reserved from the public domain at Hovenweep National Monument by number, name, legal location, and amount of water necessary for the purposes for which Hovenweep National Monument was reserved. The springs identified in Exhibit B will be utilized for in situ uses that include the protection and interpretation of the ruins and the interpretation of the life of the prehistoric inhabitants.

8. In addition to the foregoing requirements for water within Hovenweep National Monument, the National Park Service needs reserved water rights of 8.0 acre-feet per annum to satisfy future requirements for the operation, administration, and protection of

the Hovenweep National Monument, including but not limited to such uses as, the excavation, restoration and preservation of ruins and structures; construction of visitor facilities, staff and visitor domestic uses, and fire suppression. This water is necessary to fulfill the primary purposes of Hovenweep National Monument and is to be developed from any water in, on, under, adjacent or otherwise appurtenant to lands described by Proclamation No. 1654 of March 2, 1923 (42 Stat. 2299); amended by Proclamation No. 2924 of April 26, 1951 (65 Stat. c8); Proclamation No. 2998 of November 20, 1952 (67 Stat. c21); and Proclamation No. 3132 of April 6, 1956 (70 Stat. c26).

CONCLUSIONS OF LAW

9. All notices required by law for filing and publication of the application in the Resume of Water Division No. 7 have been fulfilled and the Court has jurisdiction over the subject matter and all parties whether or not they appeared. The time for filing Statements of Opposition has expired.

10. The primary purposes of the Hovenweep National Monument are as stated in Proclamation No. 1654 (42 Stat. 2299), Proclamation No. 2924 (65 Stat. c8), Proclamation No. 2998 (67 Stat. c21), and Proclamation No. 3132 (70 Stat. c26) to wit: "the protection and preservation of four groups of ruins including structures of the finest prehistoric masonry to be found in the United States" and for the protection, preservation and interpretation of the ruins and archeological sites described in each of the proclamations.

11. Under the federal reserved rights doctrine, the United States has the following reserved water rights with the following priority dates to meet the present and future needs for water necessary to fulfill the primary purposes of Hovenweep National Monument. Arizona v. California, 373 U.S. 546, 600 (1963); Cappaert v. United States, 426 U.S. 128, 138 (1976); United States v. Denver, 656 P.2d 1, 34-35 (Colo. 1982).

a. The United States has reserved water rights for the springs described in Findings of Fact Nos. 6 & 7 and Exhibit B for the protection and interpretation of the ruins, including prehistoric masonry structures, at Hovenweep National Monument. The priority dates are the dates of the reservation of the land containing the springs.

b. The United States has reserved water rights for 8.0 acre-feet of water per annum to satisfy future requirements for the operation, administration, and protection of the Hovenweep National Monument, including but not limited to such uses as, the excavation, restoration and preservation of ruins and structures; construction of visitor facilities; staff and visitor domestic uses; and fire suppression. The priority dates are the dates the

lands were withdrawn from the public domain.

12. The United States has demonstrated its entitlement to this decree as a matter of law.

DECREE

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

13. The Findings of Fact and Conclusions of Law contained herein are incorporated by reference and made a part of this Decree.

14. The United States is decreed reserved rights for the springs identified in Exhibit B, which is incorporated by reference and made a part of this decree, for use in situ, in the amounts stated in Exhibit B. This water is necessary to fulfill the primary purposes of Hovenweep National Monument as stated in Proclamation No. 1654 (42 Stat. 2299), Proclamation No. 2924 (65 Stat. c8), Proclamation No. 2998 (67 Stat. c21), and Proclamation No. 3132 (70 Stat. c26). The priority dates are the respective reservation dates as identified in Exhibit B.

15. The United States is decreed reserved rights in the amount of 8.0 acre-feet per annum for future uses for the operation, administration, and protection of Hovenweep National Monument, including but not limited to such uses as the excavation, restoration and preservation of ruins and structures; construction of visitor facilities, staff and visitor domestic use, and fire suppression. This water is necessary to fulfill the primary purposes of Hovenweep National Monument and may be developed from surface and/or ground water within the boundaries of Hovenweep National Monument. The priority dates are the dates of reservation associated with the location of the diversion.

16. This judgment and decree constitutes the final adjudication of all claims of the United States for reserved rights for the Hovenweep National Monument pursuant to Proclamation No. 1654 of March 2, 1923 (42 Stat. 2299); amended by Proclamation No. 2924 of April 26, 1951 (65 Stat. c8); Proclamation No. 2998 of November 20, 1952 (67 Stat. c21); and Proclamation No. 3132 of April 6, 1956 (70 Stat. c26) and any other applicable federal acts enacted prior to December 30, 1976.

17. Prior to the diversion and use of any surface water on land reserved from the public domain in Hovenweep National Monument, the National Park Service shall provide the State Engineer the same information that would be required in an application for a surface water right. Whereupon, the State Engineer shall administer the use in accordance with this Decree.

18. Prior to constructing any well, the National Park Service shall provide the State Engineer the same information required of an applicant for a permit to construct a well. Upon receipt of the information required of an applicant for a permit to construct a well, the State Engineer shall issue a permit and administer the use in accordance with the terms of this decree.

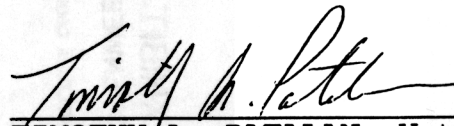
19. Subject to the availability of funds, the United States shall install and maintain such water measurement devices, recording devices, content gauges and inlet and outlet measurement and recording devices, as the case may be, as are deemed essential by the Office of the State Engineer; provided, however, that such devices shall not be located so as to interfere with the purposes of Hovenweep National Monument; and further provided that the United States shall not be entitled to curtailment of other water rights for the benefit of any of the water rights decreed herein unless the United States has installed and is maintaining the measurement devices required pursuant to this paragraph.

20. Because this Decree was entered pursuant to agreement of the parties and the issues decided herein have not been litigated between the parties, the parties shall not be collaterally estopped from asserting any factual and/or legal issues in any other cases not involving these water rights. This Decree shall not be used, considered, or cited as precedent in any other case except and only to the extent that the rights decreed herein are at issue.

21. The water clerk shall serve a copy of this Decree upon the parties, the Division Engineer, Water Division No. 7, and the State Engineer.

DATED this 31st day of July, 1997.

BY THE COURT:



TIMOTHY A. PATALAN, Water Judge
Water Division No. 7
State of Colorado

cc: K. Beegles (3)
H. Simpson
L. Johnson
W. Weiss
J. Sheftel
L. W. McDaniel
D. Hallford
P. Wells
C. Fossum
K. McCabe

UTAH
COLORADO

San Juan County
Montezuma County

INSET A

INSET B

INSET C

EXHIBIT B

IN SITU USES FOR SPRINGS AT HOVENWEEP NATIONAL MONUMENT

The following springs are located on lands reserved by Proclamation No. 1654 of March 2, 1923:

<u>Spr. #</u>	<u>Source Name</u>	<u>Legal Description</u>	<u>Amount (cfs)</u>
1	Holly House Spring	SWSES3T36NR20W	0.01
2	Horseshoe House Spring #1	SWNWS2T36NR20W	0.01
3	Horseshoe House Spring #2	SWNWS2T36NR20W	0.01
4	Horseshoe House Spring #3	SWNWS2T36NR20W	0.01
5	Horseshoe House Spring #4	SWNWS2T36NR20W	0.01

The following springs are located on lands reserved by Proclamation No. 2924 of April 26, 1951:

<u>Spr. #</u>	<u>Source Name</u>	<u>Legal Description</u>	<u>Amount (cfs)</u>
6	Hackberry House Spring #1	SENWS2T36NR20W	0.01
7	Hackberry House Spring #2	SENWS2T36NR20W	0.01
8	Hackberry House Spring #3	SENWS2T36NR20W	0.01
9	Hackberry House Spring #4	SENWS2T36NR20W	0.01
10	Hackberry House Spring #5	SENWS2T36NR20W	0.01
12	Goodman Point Spring	SWNES4T36NR17W	0.01

The following spring is located on lands reserved by Proclamation No. 3132 of April 6, 1956:

<u>Spr. #</u>	<u>Source Name</u>	<u>Legal Description</u>	<u>Amount (cfs)</u>
11	Cutthroat Castle Spring	SWSES19T37NR19W	0.01

NOTE: Legal descriptions are defined as the quarter section of the quarter section of a given section, township, and range (i.e., SWSES3T36NR20W). All townships are north of the Base Line which extends across New Mexico (between 34 and 35 degrees latitude), and all ranges are west of the New Mexico Principal Meridian.